HOUSE BILL No. 1259

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-2-14-31; IC 30-2-14-42.

Synopsis: Uniform principal and income act. Revises the law governing trusts to: (1) provide separate allocation procedures for payments made to a marital trust; and (2) permit the charging of tax payments to principal to the extent that receipts are allocated to principal. Specifies the transitional provisions.

Effective: July 1, 2009.

Foley

January 13, 2009, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1259

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 30-2-14-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31. (a) This section does not apply to ~~payments~~ **a payment** to which section 32 of this chapter applies.

(b) As used in this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments, regardless of whether the trustee also has the option to receive the amount in a lump sum or other form of payment. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. ~~including~~ **For purposes of subsections (h), (i), (j), and (k), the term also includes any payment from any separate fund, regardless of the reason for the payment.**

(c) As used in this section, "separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan.

~~(c)~~ **(d)** To the extent that a payment is characterized as interest, ~~or~~ a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate ~~it~~ **the payment** to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

~~(d)~~ **(e)** If a payment is not characterized as interest or a dividend, and if the payment is made from an individual account corresponding to an original participant, the payment shall be allocated between income and principal by:

(1) determining the income occurring within the individual account by treating the account as though it were a trust; and

(2) considering the income to be distributed as a pro rata portion of all payments made from the individual account during the year.

~~(e)~~ **(f)** If no part of a payment is characterized as interest, a dividend, or allocated under subsection ~~(d),~~ **(e),** and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

~~(f)~~ **(g)** Notwithstanding any other provision of this section, when a private or commercial deferred annuity is held as an asset of a charitable remainder trust, an increase in the value of the obligation over the value of the obligation at the time of the acquisition by the trust is distributable as income. For purposes of this subsection, the increase in value is available for distribution only when the trustee exercises a right of withdrawal or otherwise receives cash on account of the obligation. If the obligation is surrendered wholly or partially before annuitization, the cash available shall be attributed first to the increase. The increase is distributable to the income beneficiary who is the income beneficiary at the time the cash is received.

~~(g) If, to obtain a gift or estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the deduction.~~

(h) Except as otherwise provided in subsection (i), subsections (j) and (k) apply, and subsections (e) and (f) do not apply, in determining the allocation of a payment made from a separate

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fund to:

(1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code has been made; or

(2) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(i) Subsections (h), (j), and (k) do not apply if and to the extent that the series of payments would, without the application of subsection (h), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(j) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(k) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal five percent (5%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code, for the month preceding the accounting period for which the computation is made.

SECTION 2. IC 30-2-14-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 42. (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

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(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid: ~~proportionately:~~

(1) from income to the extent that receipts from the entity are allocated to income; ~~and~~

(2) from principal to the extent that

~~(A)~~ receipts from the entity are allocated **only** to principal; ~~and~~

~~(B) the trust's share of the entity's taxable income exceeds the total receipts described in subdivision (1) and clause (A).~~

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

~~(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.~~

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

SECTION 3. [EFFECTIVE JULY 1, 2009] **IC 30-2-14-31(h), as amended by this act, applies to a trust described in IC 30-2-14-31(h) on and after the following dates:**

(1) If the trust is not funded as of July 1, 2009, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in subdivision (1) or (2), January 1, 2009.

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